

TITLE 56
PORT AUTHORITIES
CHAPTER 1
GENERAL PROVISIONS

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Port Authority Amendment Act of 2004.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 2. Purpose

The purpose of this act is to establish a Port Authority of Cherokee Nation in order to transact business for the economic benefit of Cherokee Nation.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 3. Definitions

As used in 56 CNCA §§ 2 to 16:

1. "**Council**" means the Council of Cherokee Nation as established by the Cherokee Nation Constitution, Article V, Section 1 [now Article VI, Section 1].
2. "**Created**," as related to port authorities, means the activation of said authorities by ordinance or resolution as provided herein.
3. "**Notice of public hearing**" means submitting notice to the Office of the Principal Chief and the Secretary of State of Cherokee Nation.
4. "**Port Authority**" means a port authority created pursuant to authority of 56 CNCA § 4.
5. "**Submerged lands**" means the lands presently underlying the navigable streams within the

jurisdictional boundaries of Cherokee Nation, and lands underlying the waters of lakes, harbors, and navigation channels that have already been or which the impoundment of the waters will create commercial navigation facilities in the said navigable streams.

6. **"Uplands"** means lands contiguous to or fronting upon any submerged lands in Cherokee Nation.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 4. Cherokee Nation Port Authority

A. This act establishes an agency of Cherokee Nation that shall be known as the "Port Authority of Cherokee Nation." The Port Authority created in this act may combine to form joint port authorities by cooperative agreement executed by the governing bodies of any city or county or cities or counties or tribe or tribes or tribal agency. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. The joint port authority shall not transact any business or exercise its powers hereunder until or unless the respective governing bodies of the respective governmental entities pass appropriate legislation acknowledging the said creation. Acknowledgment by the city or town shall be by ordinance. County approval must be expressed by appropriate resolution. The tribe or Cherokee Nation approval must be expressed by the appropriate resolution. Each of these legislative actions must declare a need exists for an authority to function in the city, town, or county or tribal jurisdiction and acknowledge the merger with Cherokee Nation. No member of said authority shall serve who owns land in an area within five (5) miles of lands surveyed or examined for port locations. Any member of said authority that has any interests that will conflict with the interests of the authority shall be subject to removal. Any member of the authority owning lands or having lands under his control as agent or in a fiduciary capacity in an area surveyed or examined for port location shall be deemed to have a conflict of interest and subjected to removal. This limitation or membership and conflict of interest shall not apply where the site of a port has been presently engineered and designated by a port authority already organized under this act. A port authority created hereunder shall be a body corporate and politic, which may sue and be sued, and shall have the powers and jurisdiction enumerated in 56 CNCA §§ 1 to 16, inclusive.

The exercise of the powers conferred under this act by the Port Authority of Cherokee Nation shall be deemed to be an essential governmental function of Cherokee Nation. However, the Port Authority shall not be immune from liability due to it. The laws of Cherokee Nation shall govern all actions of the Port Authority formed under this act. All disputes that arise shall be heard in Cherokee District Court, unless by agreement of all parties another court of competent jurisdiction is so designated for venue.

The merger of the appropriate laws shall govern those port authorities created by joint resolution of multiple governmental entities. Joint port authorities shall not be immune from liability due to their

performance of essential governmental functions. All agreements shall state the court of competent jurisdiction that shall hear disputes arising within the jurisdiction of the created port authority.

B. A port authority established in accordance with this act may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the port authority. The Council may appropriate to the Authority any available funds not otherwise appropriated for expenditure by the authority for any purpose authorized by this act.

C. Subject to making due provisions for payment and performance of its obligations, the Port Authority of Cherokee Nation may be dissolved by the Council of Cherokee Nation. In such event the properties of the port authority shall be transferred to Cherokee Nation. Obligations of the authority shall not be obligations of Cherokee Nation, unless said obligations are specifically accepted by a majority vote of the Council of Cherokee Nation.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 5. Board of Directors

A. A Board of Directors shall govern a port authority created by this act. Members of a Board of Directors of a port authority hereby created shall consist of not more than five (5) members. The Principal Chief with the approval of the Council shall appoint Board members. The Port Authority created under this act may, with the approval of the Principal Chief and Council, form a partnership with a port authority created by Act of the State of Oklahoma. When a port authority is created by this combination, the number of Directors composing the Board shall be determined by agreement between Cherokee Nation and the political subdivision(s) of the State of Oklahoma. The appointing body may anytime remove a Director appointed by it for misfeasance, nonfeasance or malfeasance in office.

B. Each Director shall have been a qualified elector in Cherokee Nation, and, for joint authorities, of the political subdivision in which they reside, for a period of at least three (3) years next preceding his appointment.

C. The Directors of any port authority first appointed shall serve staggered terms. After that each successor shall serve for a term of four (4) years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term and any Director shall be eligible for reappointment. No Director shall be removed except for cause, and if removed shall have the right of appeal to the District Court of Cherokee Nation.

D. The Directors shall elect one of their membership as Chairman and another as Vice-Chairman, and shall designate their terms of office, and shall appoint a Secretary who need not be a Director. A majority of the Board of Directors shall constitute a quorum, the affirmative vote of which shall be necessary for any action taken by the port authority. No vacancy in the membership of the

Board shall impair the rights of a quorum to exercise all the rights and perform all the duties of the port authority.

E. Each member of the Board of Directors of the port authority shall be entitled to receive such sum of money as the Board of Directors may determine as compensation for his service as Director and reimbursement for his reasonable expenses in the performance of his duties.

History

Source. LA 5–98, eff. February 9, 1998.

§ 6. Employees

A port authority created in accordance with 56 CNCA § 4 shall establish the qualifications, duties, and compensation of such employees and professional help as it may require to conduct the business of the port. The Board may appoint an advisory board that shall serve without compensation. Any employee and/or professional help may be suspended or dismissed at anytime by the port authority. Said employees and/or professional help serves at the pleasure of the port authority.

History

Source. LA 5–98, eff. February 9, 1998.

§ 7. Area of jurisdiction

The area of jurisdiction of the Cherokee Nation Port Authority created in accordance with 56 CNCA § 4 shall include all of the territory of Cherokee Nation, together with any other property outside said boundaries conveyed to it or over which it exercises control pursuant to 56 CNCA § 9(1). A port authority created by multiple governmental entities shall exercise different powers. The right of eminent domain is set forth in 56 CNCA § 9(8). Never shall the same area be included in more than one port authority, but the jurisdiction of the Port Authority of Cherokee Nation or the first attaching shall be exclusive unless the first attaching shall cede or convey to the other.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 8. Regulation of vehicles within area of jurisdiction—Rules—Enforcement

A. The Board of Directors shall have the authority to establish rules to regulate vehicles within the real property under its direct control. The rules shall be consistent with the laws of Cherokee Nation governing the operation of vehicles on public streets and highways. Penalties for violation of these rules shall be no greater than the penalties for the same or similar violations in other areas

of Cherokee jurisdiction.

The rules may include, but need not be limited to, the following:

1. The operation of vehicles within the jurisdiction of the port authority including, but not limited to speeds, stopping, and parking.

2. The type, sizes, and weight of vehicles that may be operated within the jurisdiction of the port authority.

B. The rules of the Board of Directors promulgated pursuant to this subsection including any amendments shall be filed with the Secretary of State of Cherokee Nation and Director of the Cherokee Nation Marshal at least thirty (30) days before becoming effective. Copies of the regulations shall be furnished to any person desiring to travel within the jurisdiction of the port authority upon request without charge.

C. The port authority shall post appropriate permanent signs at every entrance to the jurisdiction of the port authority showing that the use of vehicles within the jurisdiction is subject to the rules of the port authority. The port authority shall also post appropriate permanent traffic control signs or devices including, but not limited to, stop signs and speed limit signs. Such signs shall be the same as or similar to signs used by the Cherokee Nation Department of Transportation for the same or similar purposes.

D. Rules adopted by the port authority pursuant to this section shall be enforced by Cherokee Nation and law enforcement officials cross-deputized with Cherokee Nation.

E. The District Court of Cherokee Nation shall have jurisdiction to hear and determine violations as the same or similar violations of other Cherokee law. Appeals from decisions of the District Court in cases involving violations of the rules of the port authority promulgated pursuant to this section shall be to the Supreme Court in the same manner as the same or similar violations of law.

F. Nothing in this section shall be construed to alter or prevent any concurrent or overlapping jurisdiction by other law enforcement agencies where agreements are in place.

History

Source. LA 5–98, eff. February 9, 1998.

§ 9. Powers—Plan for future development

Subject to the laws of Cherokee Nation and the regulations governing land held in trust status by the United States of America for the benefit of Cherokee Nation, a port authority established by 56 CNCA § 4 shall have full power and authority to:

1. Purchase, construct, reconstruct, sell, lease, operate and otherwise contract concerning docks, wharves, warehouses, piers, and other port, terminal, industrial or transportation facilities within its

jurisdiction consistent with the purposes of the port authority, and to make charges for the use thereof;

2. Borrow money from either public or private financial institutions, sources or any agency of Cherokee Nation or of the United States of America, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets, other than property held in trust status, of the authority as security therefor;

3. Apply for, receive, and participate in any grants from private sources, the State of Oklahoma or from the United States of America;

4. Straighten, deepen, improve, construct, reconstruct or extend any canal, channel, river, stream, basin or other watercourse or way which may be necessary or proper in the development of the facilities of such port;

5. Acquire, own, hold, sell, lease, operate or otherwise contract concerning real or personal property for the authorized purposes of the port authority:

a. Leases, subleases, assignments and contracts concerning real property held in trust status by the United States for the benefit of Cherokee Nation are subject to federal regulations and approval from the Secretary of the Interior;

b. Amendments and assignments of leases and subleases concerning real property held in trust status by the United States for the benefit of Cherokee Nation are subject to federal regulations and approval from the Secretary of the Interior;

c. The duration of leases concerning real property held in trust status is subject to federal regulations and the laws of Cherokee Nation.

6. Acquire, own, maintain, sell, or lease such land within its jurisdiction as it may deem desirable for the development, planning, construction, operation, or leasing of land or completed industrial facilities for industrial use which exercise of such authorization is hereby consistent with federal regulations and the laws of Cherokee Nation and declared to be for the benefit of Cherokee Nation;

7. Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the limits of the port authority and to establish, operate, and maintain such foreign trade zones;

8. Exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operations of any facility of the port authority and included in its official plan, if funds equal to the appraised value of the property to be acquired as the result of such proceedings shall be on hand and available for such purposes, except that:

a. Nothing contained in 56 CNCA §§ 1 to 16, inclusive, shall authorize a port authority to take or disturb property or facilities belonging to any public corporations, tribal corporations, public

utility, tribal utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, tribal corporation, public utility, tribal utility or common carrier for the payment of compensation, if any, at the sole cost of the port authority, provided that:

i. If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or tribal utility or common carrier to compete in its original area of operation;

ii. If any restoration or duplication made hereunder shall involve a relocation of such property or facilities, the port authority shall acquire no interest or right in or to the appropriated property or facilities, except as provided in subsection (C) of this section, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility, tribal utility, or common carrier;

iii. Provisions for restoration or duplication shall be described in detail in the resolution for appropriation passed by the port authority;

b. Nothing contained in 56 CNCA §§ 1 to 16, inclusive, shall authorize a port authority to take or disturb property held in trust status by the United States for the benefit of Cherokee Nation;

9. Maintain such funds, as it deems necessary;

10. Direct its agents or employees, when properly identified in writing, and after at least five (5) days' written notice, to enter upon lands within the confines of its jurisdiction to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees except for actual damage done;

11. Subject to the laws of Cherokee Nation and federal regulations, sell or lease real and personal property not needed for the operation of the port authority and grant easements or rights-of-way over property of the port authority;

12. Promote, advertise, and publicize the port and its facilities; provide traffic information and rate information to shippers and shipping interests; appear before rate-making authorities to represent and promote the interests of the port;

13. Repay grants or loans made before the effective date of this act where the funds have been expended for a proper purpose of the authority as originally authorized.

The Board of Directors of the port authority shall prepare or otherwise make provision for the preparation of a plan for the future development, construction, and improvement of the port and its facilities. The plan shall include maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the port authority.

The Board of Directors shall file five (5) copies of the plan with the Office of the Principal Chief, the Secretary of State and Secretary of Commerce and Industry of Cherokee Nation. The plan shall be available for inspection at their office by all persons interested. The plan shall fix a time and place for a public hearing of all objections to said plan, which shall be not less than thirty (30) nor more than sixty (60) days after the last submission of said notice. Any interested person may file written objections to such plan, provided such objections are filed with the Secretary of the Board of Directors at his office not less than five (5) days before the date fixed for said hearing. After said hearing the Board of Directors may adopt such plan with any modifications or amendments thereto as the official plan of the port authority.

History

Source. LA 5–98, eff. February 9, 1998.

Amended. LA 12–04, eff. April 19, 2004.

§ 10. Modification, amendment or extension of plan

The Board of Directors shall, from time to time after the adoption of said official plan, have the power to modify, amend or extend the same, provided that upon the making of any such modification, amendment or extension of it, the Board of Directors shall cause notice to be given and shall conduct a hearing, all as provided in 56 CNCA § 9. The Board shall not adopt any modification, amendment, or extension until the notice has been given and hearing held as herein provided.

History

Source. LA 5–98, eff. February 9, 1998.

§ 11. Conclusiveness and validity of plan

The plan and any modification, amendment or extension of it, when adopted by the Board of Directors after notice and hearing, shall be final and conclusive and its validity shall be conclusively presumed.

History

Source. LA 5–98, eff. February 9, 1998.

§ 12. Participation of private enterprise

The port authority shall foster and encourage the participation of private enterprise in the development of the port facilities. Private sector activity, to the fullest extent the Board deems practicable, limits the necessity of construction and operation of such facilities by the port authority. For this purpose the port authority may upon a written request by any person, partnership, or corporation, filed with the Secretary of the Board of Directors within thirty (30)

days following the notice of the adoption of an official plan as provided in 56 CNCA §§ 9 and 10, submit a proposal to provide, operate, and maintain any facility included in such plan, by publication of and invitation for bids therefor based upon specifications prepared by the Board of Directors.

The Board of Directors may accept the bid of the person, partnership, or corporation it deems best qualified by financial responsibility and business experience to construct and operate such facility or facilities in accordance with its official plan.

History

Source. LA 5–98, eff. February 9, 1998.

§ 13. Prohibitions

Nothing contained in 56 CNCA §§ 1 to 16, inclusive, of this act shall:

1. Impair the provisions of law or ordinance directing the payment of revenues derived from public property into sinking funds or dedicating such revenues to specific purposes;
2. Enlarge, alter, diminish, or affect in any way, any lease or conveyance made, or action taken before the creation of a port authority by any action of the Council of Cherokee Nation;
3. Impair or interfere with the exercise of any permit for the removal of sand or gravel, or other similar lease permits approved by the Council of Cherokee Nation and executed by the Arkansas Riverbed Authority or the United States.

History

Source. LA 5–98, eff. February 9, 1998.

§ 14. Bids

A. No contract for the creation, construction, alteration, or repair of any building, structure, or other improvement undertaken by a port authority created in accordance with 56 CNCA § 4 and involving an expenditure exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) shall be let. Except as otherwise provided by subsection (C) of this section, no sale of any real property or property having a fair market value exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) shall be made by the port authority unless notice calling for bids for the same shall have been given by notice as provided by 56 CNCA § 3. No such contract shall be let except to the lowest and best bidder. No such sale shall be made except to the highest and best bidder. For any sale of land by the port authority requiring competitive bids, specifications for the bids for such sale shall be in such form and detail as shall be determined by the port authority.

B. Competitive bids shall not be required for the sale of real property or property by a port authority if:

1. Such real property or property is to be sold for industrial development purposes;
2. The real property or property was acquired by the port authority for industrial development purposes; and
3. The contract for the sale of such real property or property has been approved by the Board of Directors of such port authority.

Every contract let shall be in writing, and if the same involves work or construction, it shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared for and approved by the port authority, signed by the Chairman of the port authority and by the contractor, and shall be executed in triplicate.

History

Source. LA 5–98, eff. February 9, 1998.

§ 15. Budget—Disposition of rents and charges

A. The Board of Directors of a port authority created in accordance with 56 CNCA § 4 shall annually prepare a budget for the port authority.

B. Rents and charges received by the port authority shall be used for the general expenses of the port authority and to pay interest, amortization, and retirement charges on money borrowed.

At the end of any calendar year, any surplus of funds remains after providing for the above uses; the Board of Directors may pay such surplus into the general funds of Cherokee Nation in proportion to the taxable value of all property within the port authority.

History

Source. LA 5–98, eff. February 9, 1998.

§ 16. Bond of Secretary—Deposit of funds—Disbursements

Before receiving any monies, the Secretary of a port authority created in accordance with 56 CNCA § 4 shall furnish a bond in such amounts as shall be determined by the port authority, with sureties satisfactory to it. All funds coming into the hands of the Secretary shall be deposited by him to the account of the port authority in one or more such depositories as shall be qualified to receive deposits, which deposits shall be secured in the same manner as Cherokee Nation funds are required to be secured. No disbursements shall be made from such funds except in accordance with rules and regulations adopted by the port authority.

History

Source. LA 5–98, eff. February 9, 1998.

CHAPTER 2

BONDS

§ 21. Authorization for port authority to borrow money and issue bonds

For the purpose of paying all or any part of the cost of acquiring land or interests therein, and the cost of constructing, acquiring, equipping, and furnishing buildings, structures, plants, docks, wharves, warehouses, piers and other port, terminal and transportation facilities, or any part thereof; including additions, improvements, relocations, renovations, extensions and modifications thereof; (all of which are included in a single project are hereafter referred to in this act as "facility or facilities"), a port authority is authorized to borrow money upon credit of the income and revenues to be derived from the operation of such facilities, together with any other available income and revenues from other revenue-producing facilities of the port authority, and to issue negotiable bonds in such amounts as the Board of Directors of the port authority shall deem necessary for the purpose; and to provide for payment of such bonds and rights of holders thereof as herein provided.

History

Source. LA 5–98, eff. February 9, 1998.

§ 22. Terms, maturities, form, etc. of bonds

Bonds authorized by this act may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their date, may be in such denominations and in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate of interest, not exceeding five percent (5%) per annum, as may be provided by official resolution of the Board of Directors of such port authority.

Such bonds may be sold in such manner and at such price or prices, not less than par plus accrued interest to date of delivery, as provided in 56 CNCA § 29, but interest cost to maturity for bonds issued hereunder shall not exceed five percent (5%) per annum, computed on the basis of average maturities according to standard tables of bond values.

History

Source. LA 5–98, eff. February 9, 1998.

§ 23. Bonds issued pursuant to loan or purchase agreement with United States government

In the event any issue or series of bonds is issued under authority of this act pursuant to a loan

agreement or bond purchase agreement with any agency of the United States government, then and in that event, notwithstanding any other provision of law, the Board of Directors of the port authority may in any resolution authorizing bonds hereunder provide for the initial issuance of one or more bonds (in this section called "bond") aggregating the amount of the entire issue; and may arrange for installment payments of the principal amount of any such bond as it may consider desirable; and may provide for the making of any such bond payable to the bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The Board of Directors of the port authority may further make provision in any such resolution for the manner and circumstances under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest

History

Source. LA 5-98, eff. February 9, 1998.

§ 24. Exemption from taxation—One bond issue for more than one project or facility—Payment from combined revenues

Bonds issued hereunder shall not be subject to taxation by the State of Oklahoma, or by any county, municipality or political subdivision thereof. The Board of Directors of a port authority may in its discretion authorize one (1) issue of bonds hereunder for the acquisition, construction, relocation, improvement, extension, addition, furnishing or equipping of more than one building, structure, project or facility, as herein defined, and may make said bonds payable from the combined revenues of all such buildings and facilities so constructed, acquired, improved, extended, furnished or equipped, in whole or in part, with the proceeds of such bonds; together with revenues from the operation of any existing revenue-producing buildings or facilities. If more than one series of bonds shall be issued hereunder, payable from the revenues of such buildings and facilities, priority of a lien thereof as to such revenues shall be as prescribed by proceedings authorizing the issuance of such respective bond issues. It shall be within the discretion of the Board of Directors of the port authority at the time the first series of bonds is authorized, to provide that subsequent series of bonds payable from the same revenues, in whole or in part, shall not be issued; or that subsequent series of bonds shall be subordinate as to a lien; or that subsequent series of bonds shall enjoy parity of a lien upon such conditions and restrictions as are specified therein.

History

Source. LA 5-98, eff. February 9, 1998.

§ 25. Refunding bonds

The Board of Directors of a port authority may issue bonds hereunder for the purpose of refunding any bonds or other obligations of the port authority theretofore issued pursuant to this act; or it may authorize a single issue of bonds hereunder for the purpose in part of refunding such previous

obligations and in part for the making of additions, improvements and extensions to such buildings and facilities, or the construction and acquisition of additional buildings and facilities, and furnishing and equipping thereof.

Where bonds are issued under this paragraph solely for refunding purposes, such bonds either may be sold as provided in 56 CNCA § 33 or may be exchanged for outstanding obligations. If sold, the proceeds either may be applied to payment of obligations refunded or may be deposited in escrow for the retirement thereof. All refunding bonds issued under this section shall in all respects be authorized, issued and secured in the manner provided for other bonds issued under this act and shall have all attributes of such bonds. The Board of Directors may provide that any such refunding bonds shall have the same priority of a lien on the revenues pledged for their payment as was provided for obligations refunded thereby.

History

Source. LA 5–98, eff. February 9, 1998.

§ 26. Bonds as special obligation of port authority concerned

No provision of this act shall be construed to authorize the pledge or use of any appropriated funds of Cherokee Nation, or any other tax revenues, for the payment or security of any bonds issued pursuant to this act. No bonds issued under provisions of this act shall become a debt or obligation of Cherokee Nation, nor shall the faith and credit of Cherokee Nation be pledged in whole or in part, directly or indirectly, for the payment of such bonds, or interest thereon.

Bonds issued under this act shall not be an indebtedness of any county or counties, or any municipal corporation or municipal corporations, which shall have created or joined in the formation of the port authority issuing the same. All bonds issued pursuant to this act shall be special obligations of the port authority concerned, payable solely from the revenues of the buildings and facilities referred to therein. Such bonds shall contain on the face thereof a statement to the effect that neither Cherokee Nation, nor, in the instance of a joint authority, shall any county or a municipal corporation concerned be obligated to pay the same, or the interest thereon, except from revenues of such facilities; and that neither the faith and credit nor the taxing power of Cherokee Nation or any political subdivision of the state is pledged or may hereafter be pledged to the payment of principal of or interest on such bonds.

History

Source. LA 5–98, eff. February 9, 1998.

§ 27. Powers of Board of Directors in connection with payment of principal and interest

The Board of Directors of a port authority issuing bonds pursuant to the provisions of this act is authorized to pledge for the payment of principal of or interest on such bonds, all or any part of the revenues to be derived from the management and operation of the buildings and facilities for the construction, acquisition or improvement of which the bonds are issued; together with any other

available income and revenues from revenue-producing facilities of such port authority. In order to secure prompt payment of the principal and interest, and the proper application of revenues pledged thereto, the Board of Directors of such port authority is authorized by appropriate resolution:

1. To covenant as to the use and disposition of the proceeds of the sale of such bonds;
2. To covenant as to the operation of facilities and buildings and the collection and disposition of the revenues derived from such operation;
3. To covenant as to the rights, liabilities, powers and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;
4. To covenant and agree to carry such insurance on the buildings and facilities, and the use and occupancy thereof as may be considered desirable and, in its discretion, to provide that the cost of such insurance shall be considered a part of the expense of operating the buildings and facilities;
5. To vest in a trustee or trustees the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of bonds issued hereunder and to hold, apply and dispose of the same, and the right to enforce any covenant made to secure the bonds; and to execute and deliver a trust agreement or agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and may limit the liabilities thereof and prescribe the terms and conditions upon which such trustee or trustees or the holder or holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all such covenants and resort to such remedies as may be appropriate;
6. To fix rents, charges and fees to be imposed in connection with and for the use of the buildings, services and facilities of such port authority, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the buildings and facilities, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the buildings and facilities, as it may deem desirable for the accomplishment of the purposes of this act;
7. To covenant to maintain a maximum percentage of use and occupancy of the buildings and facilities for revenue producing purposes;
8. To covenant against the issuance of any other obligations payable from the revenues to be derived from the buildings and facilities; and to covenant as to priority of resort to such revenues between obligations of such port authority.

All such agreements and covenants entered into by the Board of Directors of such port authority shall be binding upon the Board and the authority, its agents and employees, and upon its successors in interest; and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder or in their behalf.

History

Source. LA 5–98, eff. February 9, 1998.

§ 28. Agreements or contracts with United States

The Board of Directors of a port authority may enter into any agreement or contract with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds, a contract for purchase of its bonds, or any other aid or assistance in connection with the construction, addition, furnishing and equipping of any building or facility as herein defined.

History

Source. LA 5–98, eff. February 9, 1998.

§ 29. Segregation and use of proceeds from bond sales—Construction contracts

The proceeds to be derived from the sale of bonds herein authorized shall be segregated and used solely for the purpose for which the bonds are authorized. The Board of Directors of a port authority is authorized to make any contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing and equipping of any building or facility as herein defined.

History

Source. LA 5–98, eff. February 9, 1998.

§ 30. Approval of bonds by Treasurer—Incontestability

All bonds issued hereunder shall contain the required certificates under the laws of Cherokee Nation. Such bonds shall be submitted to the Treasurer for examination, and when such bonds have been examined and certified as legal obligations of the issuing Authority by the Treasurer in accordance with such requirements as he may make, the same shall be incontestable in any court in Cherokee Nation unless suit thereon shall be brought in a court having jurisdiction thereof within thirty (30) days from the date of such approval.

History

Source. LA 5–98, eff. February 9, 1998.

§ 31. Lawful securities for investments

Bonds issued under the provisions of this act are hereby made securities in which all banks, trust companies, trust and loan associations, investment companies, and others carrying on a banking

business; all insurance companies and insurance agencies and others carrying on an insurance business, may lawfully invest funds, including capital funds, under their control or belonging to them, providing such bonds shall not be used by any depository as security for any Cherokee Nation funds.

History

Source. LA 5-98, eff. February 9, 1998.

§ 32. Interim notes and conditions of issue

Whenever the Board of Directors of a port authority shall have adopted a resolution authorizing the issuance of any series of bonds hereunder and said bonds have been sold but prior to the time as of which the bonds can be delivered, the Board of Directors of a port authority finds it necessary to borrow money for the purpose for which the bonds were authorized, such Board of Directors may, by appropriate resolution, authorize the borrowing of money in anticipation of the issuance of the bonds, and the issuance of the note or notes of the Board of Directors to evidence such borrowing. The amount so borrowed shall not exceed the principal amount of the bonds and shall not bear interest at a rate exceeding the average interest rate of the bonds. Such note or notes shall be signed in the manner prescribed by the Board of Directors and shall be made payable at such time or times as the Board of Directors may prescribe, not later than one (1) year from their respective dates and may be renewed from time to time by the issuance of new notes hereunder. The proceeds of any loan made under this section shall be devoted exclusively to the purpose for which the bonds shall have been authorized and the note or notes and the interest thereon shall be paid with the proceeds of the bonds simultaneously with the delivery of the bonds. If for any reason the bonds shall not be issued, the holder or holders of the notes shall be entitled to all rights which would have been enjoyed by the holders of the bonds had they been issued; and the notes shall be paid from the revenues provided for the payment of the bonds, and shall be entitled to the benefit of all covenants, agreements and rights appearing in the resolution authorizing the bonds for the benefit of the bonds.

History

Source. LA 5-98, eff. February 9, 1998.

§ 33. Public bids for bonds sold

All bonds sold hereunder shall be awarded to the best bidder, based upon an open competitive public offering. Notice of sale of such bonds shall be advertised at least fourteen (14) days in advance of the time of receiving bids and said notice shall appear at least once a week for two (2) successive weeks in a newspaper of general circulation in Cherokee Nation where the principal office of the port authority is located. No bonds shall be sold for less than par value.

Contracts for construction, labor, equipment, material, or repairs in excess of Five Hundred Dollars (\$500.00) shall be awarded by the port authority to the lowest and best competitive bidder, pursuant to public invitations to bid, which shall be published in the manner provided in the

preceding section hereof. Such advertisements shall appear in the county where the principal office of the port authority is located. Provided, however, should the port authority find that an immediate emergency exists, which findings shall be entered in the minutes of said port authority, by reason of which an expenditure in an amount exceeding Five Hundred Dollars (\$500.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then such contracts may be made and entered into without public notice or competitive bids.

History

Source. LA 5–98, eff. February 9, 1998.

§ 34. Trustees—Oath of office—Fidelity bond

Any trustee, as provided herein, first shall take the oath of office required of an elected public officer and shall be under a good and sufficient fidelity bond, to be approved by the Treasurer, in a surety company authorized to transact surety business in Cherokee Nation. The cost of said bond shall be paid from funds of the revenue bonds. Any person authorized to administer oaths in Cherokee Nation shall administer the oaths of office.

History

Source. LA 5–98, eff. February 9, 1998.

§ 35. Meetings and records of authority open to public

After the effective date of this act meetings of an organized port authority shall be open to the public to the same extent as is required by law of other public boards and commissions. All records of said authority shall be public records and shall be kept in a place, the location of which shall be listed in the Office of the Principal Chief.

History

Source. LA 5–98, eff. February 9, 1998.

§ 36. Limitation on liability of trustee or beneficiary

No trustee or beneficiary shall be charged with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property, except for willful or grossly negligent breach of trust; provided, however, any act, liability for any omission, or obligation of a trustee or trustees, in the execution of such trust or in the operation of the trust property, shall extend to the whole of the trust estate or so much thereof as may be necessary to discharge such liability or obligation and not otherwise.

History

Source. LA 5–98, eff. February 9, 1998.

